BAIL SLIP

The Appellants in Crl.A.No.336/2004 Viz 1) Abbas @ Deva Abbas (A4) 2) Abdul nazer (A5) 3) Abdul Hackeem (A6) were directed to be released on bail as per order of this Court dated 15/6/06 and made in Crl.A.No.336/2004 dated 10/4/06 and made in Crl.M.P.No. 1864/2006.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.12.2006

CORAM

THE HON'BLE MR.JUSTICE R.BALASUBRAMANIAN
&
THE HON'BLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

CRL.APP.NOS.338 AND 336 OF 2004

1.Abu Thakir
2.Shajakhan
3.Sirajudeen ..Appellants in Crl.A.No.338/2004/Accused 1 to 3

1.Abbas @ Deva Abbas
2.Abdul Nazar
3.Abdul Hackeem ..Appellants in Crl.A.No.336/2004/Accused 4 to 6

Vs.

State represented by
Inspector of Police
R-1, Podanur Police Station
Crime No.271/2002
Coimbatore District ..Respondent in both the appeals /Complainant

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Prayer: Criminal appeals under Section 374(2) of Crl.P.C. against the judgment dated 11.02.2004 passed by the learned First Additional Sessions Court, Coimbatore in S.C.No.114/2003.

For Appellants in Crl.A.No.336/04 : Mr.V.Gopinath, SC for
: Mr.N.Manokaran

For 1st Appellant in Crl.A.No.338/04 : Mr.B.Sriramulu, SC for
: M/s.N.Sultan Aribeen

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For Appellants 2&3 : Mr.S.Shanmugavelayutham, SC for
in Crl.A.338/2004 : Mr.B. Appu Kutty

For Respondent in : Mr.N.R.Elango, APP
both the appeals

COMMON JUDGMENT

(Judgment of the court was delivered by
Justice R.Balasubramanian)

Six accused were tried in S.C.No.114/2003 on the file of the First Additional Court of Sessions, Coimbatore, for various offences. At the end of the trial, the learned trial Judge found A1 to A3 guilty under sections 120-B, 148, 341 and 302 I.P.C; A4 and A6 under sections 120-B, 147 and 302 read with section 149 I.P.C and A5 under sections 120-B and 302 read with section 109 I.P.C. For the offence of criminal conspiracy, each one of the convicted accused stands sentenced to undergo imprisonment for life together with a fine of Rs.10,000/-, carrying a default sentence. For the offence of murder, either directly or with the aid of section 149 or 109 I.P.C, each one of the convicted accused stands sentenced to undergo imprisonment for life together with a fine of Rs.10,000/-, carrying a default sentence. For the offence under section 341 I.P.C., each one of the convicted accused stands sentenced to undergo one month rigorous imprisonment together with a fine of Rs.500/-, carrying a default sentence. For the offence under section 148 I.P.C., the convicted accused stands sentenced to undergo two years rigorous imprisonment together with a fine of Rs.10,000/-, carrying a default sentence. The sentences stand directed to run concurrently. Hence, the convicted A4 to A6 have filed Crl.App.No.336/2004 and A1 to A3 have filed Crl.App.No.338/2004 before this court. Heard Mr.B.Sriramulu learned senior counsel appearing for A1; Mr.S.Shanmugavelayutham learned counsel appearing for A2 and A3; Mr.V.Gopinath learned senior counsel appearing for A4 to A6 and Mr.N.R.Elango learned Additional Public Prosecutor defending the State.

2. According to the prosecution, on 26.03.2002 a Muslim by name Sultan Meeran was murdered by two persons and therefore, to retaliate, a criminal conspiracy was hatched on 27.03.2002 by the accused; as a consequence to the criminal conspiracy, all the accused formed themselves into members of unlawful assembly (A1 to A3 armed) on 28.03.2002 at 7.30 a.m and in the course of the same transaction, by wrongfully restraining Murugesan (since deceased), A1 to A3 caused his death. To prove their case, the prosecution examined P.Ws.1 to 30, besides marking Exs.P.1 to P.77 and M.Os.1 to 43. The defence, on their side, examined four witnesses as D.Ws.1 to 4 and marked

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defence material object Nos.1 to 10. P.W.1 is working in a lorry transport office at Ukkadam. The deceased, who is a member of RSS, is P.W.1's younger brother. P.W.1, the deceased and their mother are all living together. The deceased was an active member of RSS. Both P.W.1 and the deceased are unmarried. At about 6.30 a.m on the occurrence day, the deceased was taking his bath and P.W.1 went to a nearby barbar shop to have a shave. P.W.1's paternal uncle came to the barbar shop and informed P.W.1 that east of Badrakaliamman Koil, somebody are engaged in a quarrel with Murugesan (since deceased). Immediately P.W.1 ran towards that place, where he found his younger brother lying on the ground with bleeding injuries. Murugesan did not respond to the calls of P.W.1. P.Ws.5 and 28, the former residing east of P.W.1's house and the latter residing at Kovaipudur, were there in the crowd. When P.W.1 enquired them, they told him that the attack is in the context of the earlier incident, where, a person belonging to the assailants' community had come to be stabbed. They also told him that the assailants ran away from the crime scene. Within ten minutes thereafter, P.W.6 came there and she informed P.W.1 that in the morning when she was opening her shop (P.W.6 is having a fruit vending shop), she noticed two or three persons coming near her shop in a red colour car and scooter and then they proceeded in the pathway leading to the temple. Sometime later, P.W.1's uncle Subramani (not examined) and P.W.15 came there. P.W.15 and others took injured Murugesan in the car of P.W.1's uncle to the Government Hospital at Coimbatore. En route, P.W.14, over his mobile phone, informed the investigating police station. When P.W.1 reached the crime scene, it was 7.30 a.m and fifteen minutes thereafter, they left for the hospital, which they reached at 8.00 a.m. The duty Doctor, by examining Murugesan, pronounced him dead.

3. P.W.29, the Sub-Inspector of Police, came to the hospital and examined P.W.1. The narration of P.W.1 was reduced into writing by P.W.29, in which P.W.1 had signed. Ex.P.1 is the said complaint. Murugesan was wearing a white colour shirt and a white dhoti. At the crime scene, the handbag of the deceased, his hawai slippers (two in number) and a mobile phone were found. M.O.1 is the mobile phone. M.O.2 is the handbag and M.O.3 is the hawai slippers. At 8.30 a.m., the Investigating Officer came to the hospital. During inquest, P.W.1 identified the dead body of his brother. M.Os.4 and 5 are the dhoti and shirt of the deceased respectively. P.W.29 is the Sub-Inspector of Police in the investigating police station. At 8.20 a.m on 28.03.2002 when he was in the police station, P.W.15, who is the local BJP leader, telephoned to him and said that Murugesan, a resident of Kovaipudur, had been stabbed by a few and with multiple injuries, he is being taken to the Government Hospital at Coimbatore. On that information, P.W.29 reached the hospital at 8.45 a.m where, he came to know that Murugesan had already died. He collected the death intimation available in the police outpost. He examined P.W.1 and recorded his statement. P.W.29 came back to the police station

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at 9.45 a.m and registered that complaint as Ex.P.1 in his police station Crime No.271/2002 for various offences. Ex.P.72 is the printed first information report. Then, he sent the express records to the court as well as to the higher officials. P.W.30 is the Investigating Officer. As there was no supply of printed forms of first information report by the Government, first information report was prepared in a xerox copy of the printed first information report format. Since six months before the occurrence, there was no supply of printed first information report forms. Since xerox copy of the first information report format is used, care is taken to see that the serial number available in the printed first information report is not masked while taking xerox copies. P.W.30, on the occurrence day morning, received information over wireless about this crime and accordingly, taking permission from his higher ups to leave the place where he was on duty, reached the crime scene at about 10.00 a.m on that morning. He collected the express records from police constable Rajendran and in the presence of P.W.20 and another, he prepared Ex.P.30, the observation mahazar and Ex.P.74, the rough sketch, between 10.00 and 10.20 a.m. Then he made security arrangements for the place and proceeded to the Government Hospital, where, in the presence of panchayatdars and witnesses, he conducted inquest over the dead body. Ex.P.73 is the inquest report. As Murugesan's relatives wanted to donate the eyes of Murugesan, with the permission of the Chief of the Hospital, the eyes of Murugesan were allowed to be removed. Then, P.W.30 gave Ex.P.47 (requisition) to the hospital to conduct post mortem.

4. P.W.21 is the Casualty Medical Officer in the Government Medical College Hospital at Coimbatore, before whom, at 8.30 a.m on 28.03.2002, Murugesan (since deceased) was brought by P.W.15 and others. On examination, P.W.21 found Murugesan already dead. Ex.P.32 is the accident register issued by P.W.21. P.W.21 consigned the dead body to the mortuary and Ex.P.33 is the record in regard thereto. P.W.21 sent intimation to the police outpost about the medico legal case. P.W.23 is the Professor of Forensic Medicine in the Government Medical College Hospital at Coimbatore. On receipt of Ex.P.47, the requisition to conduct post mortem on the dead body of Murugesan, P.W.23 commenced post mortem on the dead body at 12.25 p.m on 28.03.2002. During post mortem, he found various symptoms as noted by him in Ex.P.48, the post mortem report. The symptoms are as hereunder:

> "1) Vertically oblique stab injury over front of right side of chest measuring 5 cms x 2.5 cms x entering the right thoracic cavity. The upper outer end of the wound is 6 cms above and medial to right nipple. On dissection the wound passes backwards, medially and downwards in the right third intercostal space cutting the intercostal muscles, vessels, nerves and cutting the fourth rib close to

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sternum. Then it has caused a stab injury in the underlying anterior aspect of lower part of upper lobe of right lung measuring 2.5 cms x 1 cm x 1.5 cms and exited out in the inner aspect of lower part of right lung measuring 2.25 cms x 1 cm. Then it caused a cut in the right side of front of pericardium measuring 1.75 cms x 1 cm and then caused a stab in the anterior aspect of right ventricle measuring 1.5 cms x 1 cm x cavity deep. Pericardial sac contains 50 ml of blood with clots. Right pleural cavity contains 750 ml of blood with clots. The depth of the wound tract is about 10 cms. The margins of the wound are regular and both ends are pointed.

2) Transversely oblique stab injury over back of left side of upper chest measuring 3 cms x 1 cm x entering the left thoracic cavity. The lower medial end of the wound is 4 cms from the middle of T 3 vertebra. The wound passes forward, downwards and medially through the left third intercostal space causing a stab injury in the posterior aspect of upper lobe of left lung measuring 2 cms x 1 cm x 2 cms. The deepest part ending as a point. Both ends of the wound are pointed and the margins are regular. The length of the wound tract is about 8 cms left pleural cavity contains 400 ml of blood with clots.

3) Vertically oblique stab injury over back of right side of upper chest measuring 3 cms x 1 cm x entering the right thoracic cavity. The upper medial end of the wound is 1.5 cms from the middle of T 4 vertebra. The wound passes downwards, laterally and forwards in the fourth right intercostal space cutting the right fourth rib in the posterior aspect and causing a stab injury in the middle lobe of right lung measuring 2.5 cms x 1 cm x 2 cms and the deepest point ending as a point. The length of the wound tract is about 8 cms. Both ends of the wound are pointed and the margins are regular.

4) Transversely oblique stab injury over back of left side of upper chest close to midline measuring 3 cms x 1 cm x 3.5 cms deep in the muscle plane. The lower inner end of the wound is close to middle of T3 vertebra. The wound passes downwards, laterally and forwards. Both ends of the wound are pointed and margins are regular.

5) Vertically oblique stab injury just below the right side of lower lip measuring 1 cm x 0.5 cms through and through and exiting through the buccal surface of the lower lip on the right side, wound measuring 0.75 x 0.5 cm. The wound passes upwards, backwards and laterally. The length

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of the wound tract is about 1 cm. The upper inner end of the wound is 1 cm right to midline of chin. The ends of the wound are pointed (both) and the margins are regular.

6) Vertically oblique stab injury over the middle third of back of left arm measuring 4.5 cms x 2 cms x 6 cms deep in the muscle plane. The distal outer end of the wound is 8 cms above left elbow. The wound passes upwards, forwards and medially. Both the ends of the wound are pointed and margins are regular.

7) Oblique stab injury over the posterior aspect of left hip measuring 3 cms x 1 cm x 5 cms deep in the muscle plane. Both ends of the wound are pointed and the margins are regular. The lower outer end of the wound is 7 cms below and behind the left anterior superior illiac spine. The wound passes forwards, upwards and laterally.

8) An oblique cut injury over left side of upper lip measuring 3 cms x 1 cm x 1 cm muscle deep.

9) An oblique cut injury over left side of lower lip measuring 4 cms x 1 cm x 1 cm muscle deep.

10) Transversely oblique incised wound over front of upper part of neck just above thyroid cartilage measuring 3 cms x 1 cm x skin deep.

11) Oblique incised wound in the middle of right infra clavicular region measuring 1 cm x 0.5 cm x skin deep. The upper inner end of the wound is 6 cms from the medial end of right clavicle.

12) Transversely oblique skin deep incised wounds four in number in the left subscapular region measuring 5 cms x 1 cm, 3 cms x 1 cm, 2 cms x 0.5 cm and 1 cm x 0.5 cm.

13) Transversely oblique skin deep incised wound over upper interscapular region on the right side measuring 2 cms x 1 cm.

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14) Transversely oblique skin deep incised wound over the back of right lower chest measuring 2 cms x 0.5 cms.

15) Vertically oblique skin deep incised wound over the upper interscapular region on the left side measuring 4 cms x 0.5 cm.

16) Vertically oblique skin deep incised wound over

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the upper interscapular region on the right side measuring 2 cms x 0.5 cms.

17) Transversely oblique skin deep incised wound over the back of left side of upper abdomen measuring 2 cms x 1 cm.

18) Transversely oblique skin deep incised wound over the dorsum of right wrist measuring 5 cms x 0.5 cm.

19) Oblique cut injury over the dorsum right hand measuring 5 cms x 1 cm x bone deep.

20) Another transversely oblique cut injury over the dorsum of right hand close to right index finger measuring 3 cms x 1 cm x bone deep.

21) Oblique cut injury over the radial aspect of right palm measuring 2 cms x 0.5 cm x 1 cm muscle deep.

22) Oblique cut injury over the medial aspect of lower third of right thigh 5 cms above right knee measuring 7 cms x 2 cms x 1 cm deep in the subcutaneous plane.

23) Transversely oblique cut injury over the front of upper part of left arm 12 cms below the top of left shoulder measuring 2 cms x 1 cm x 1 cm deep in the muscle plane.

24) Oblique incised wound over the front of upper part of left forearm 8 cms below left elbow measuring 3 cms x 0.5 cm x skin deep.

25) Abrasions seen in the following regions:

- 1 cm x 1 cm, 0.5 x 0.5 cm over right side of forehead.
- 3 cm x 0.25 cm over right lateral aspect of lower chest.
- 2 cm x 1 cm, 0.5 cm x 0.5 cm over dorsum of proximal part of right forearm.
- 2 cm x 1 cm over back of right elbow.
- 3 cm x 1 cm, 2 cm x 1 cm over lateral aspect of upper part of right leg.
- 4 cm x 3 cm over lateral aspect of middle third of right thigh.
- 2 cm x 1 cm over the lateral aspect of right hip.
- 7 cm x 4 cm over the lateral aspect of right gluteal

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region.

- 3 cm x 1 cm just below left mastoid.
- 4 cm x 1 cm and 3 cm x 1 cm over left lateral aspect of neck.
- 3 cm x 1 cm over left supra scapular region.
- 4 cm x 0.5 cm and 1 cm x 1 cm over lateral aspect of upper part of left arm.
- 1 cm x 1 cm over posterior aspect of lower part of left arm.
- 5 cm x 4 cm and 0.5 cm x 0.5 cm over posterior aspect of left elbow.
- 4 cm x 2 cm over lateral aspect of left hip.
- Multiple tiny scratch abrasions over left knee, lower part of left forearm, right hand, right side of face, left side of forehead, dorsum of nose and over front of neck.

Other findings:

- Peritoneal cavity empty.
- Lungs cutsection pale.
- Heart all chambers empty. Coronaries patent.
- Hyoid bone intact.
- Stomach contains 150 ml of brown colour fluid without any specific smell. Mucosa pale.
- Small intestine contains 20 ml bile stained fluid without any specific smell. Mucosa pale.
- Liver, spleen, kidneys and brain cutsection pale.
- Urinary bladder empty.
- External genitalia nil injury. Right hydrocele present."

The Doctor opined that death is due to haemorrhage and shock due to injuries 1, 2 and 3 (stab injuries over chest and corresponding internal injuries to heart and both lungs). According to the Doctor, death would have occurred 4 to 8 hours prior to autopsy. Ex.P.49 is the viscera report, which shows that neither poison nor alcohol was detected in the viscera. Except the abrasions, injuries 1 and 6 could have been caused by the knife shown to him. Injuries 2 to 5 and 7 are stab injuries and the injuries noted in serial No.6 could have been caused by the use of two knives. Cut injuries and tear injuries might have been caused by the weapons in M.O.6 series.

5. P.W.30, from the crime scene, recovered M.O.1 (mobile phone); M.O.2 (a faded dark colour canvass cloth shoulder bag) and M.O.40 series viz., a sum of Rs.5,920/- consisting of 17 notes in Rs.100/-

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denomination; 34 notes in Rs.50/- denomination; 4 notes in Rs.20/- denomination and 47 notes in Rs.10/- denomination. Besides the above, he also recovered M.O.8 series (a key chain); M.O.3 (a pair of faded yellow colour hawai chappals); M.O.7 (a knife cover); M.O.9 (blood stained earth) and M.O.10 (sample earth) under Ex.P.31 attested by P.W.20 and another. Then, he examined P.Ws.2 to 4, 7, 8, 16 and 20 by recording their statements. On 29.03.2002, he examined P.Ws.15, 19 and 23 by recording their statements. On 30.03.2002 and 31.03.2002, P.W.30 examined further witnesses by recording their statements. On 01.04.2002, P.W.30 sent the incriminating objects recovered from the crime scene to the court. He recovered M.Os.5, 41, 42 and 4 removed from the dead body after post mortem and handed over to him under Form 95 (Ex.P.75). On 02.04.2002, 04.04.2002 and 08.04.2002, he examined further witnesses by recording their statements.

6. On prior information, P.W.30 arrested A1 identified by the informant at 8.15 p.m on 10.04.2002 and examined him in the presence of P.W.25 and another. A1 gave a voluntry confession statement at that time, the admissible portion of which is Ex.P.53. The statement was recorded from 8.15 p.m till 10.30 p.m on that day. Pursuant to the same, A1 led the police party and the witnesses to another place, from where, he produced a knife (M.O.6 series), which was recovered under Ex.P.54 attested by the same witnesses. Then, A1 took the police party and the witnesses to the crime scene and then to his house, from where, he produced M.O.15, a full sleeves polyester shirt; M.O.16, a faded blood stained pant; Ex.P.17 (medical record); M.O.17 and M.O.18 (Journals) under Ex.P.55 (search list) attested by the residents of the house. The arrested accused was brought to the police station and confined in the station cell. Then, P.W.30 examined P.Ws.13 and 14 and recovered the medical case sheet of A1 under Ex.P.56. He then altered the section of offence and prepared Ex.P.76, the altered express first information report. At 6.00 a.m on 11.04.2002, P.W.30 arrested A2 on prior information on he being identified by the informant. At that time, A2 gave a voluntary confession statement, the admissible portion of which is Ex.P.50, pursuant to which, one knife (M.O.6 series) came to be recovered under Ex.P.51. A2 then led the police party to the crime scene. Then, he took the police party to his residence, from where, he produced M.O.14 (blood stained full sleeves shirt); M.O.13 (faded cement colour pant); M.O.11 (a book on religion) and M.O.12 (another book) under Ex.P.52 (search list). The arrested A2 was brought to the police station and then locked up in the station cell. On prior information, he searched the house of A3 in the presene of P.W.25 and another. A3 was not available there. From his house, he recovered M.O.19 series under Ex.P.57 (search list). P.W.30 also searched the house of A5, from where, M.O.20 series came to be recovered under Ex.P.58 (search list). Then P.W.30 searched the house of A4, from where, he recovered M.O.21 series under Ex.P.59 (search list). The

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house of the absconding accused Ibrahim was also searched, from where, M.O.22 series came to be recovered under Ex.P.60 (search list). The house of another absconding accused by name Ashraf Ali was also searched, from where, M.O.23 series came to be recovered under Ex.P.61 (search list). A1 and A2 were sent for judicial remand. As A1 had injuries on his right hand wrist, he was sent for treatment with a medical memo. P.W.30 arrested A3 at 9.00 p.m on 11.04.2002 on being identified by the informant and examined him in the presence of P.W.25 and another. A3 at that time gave a voluntary confession statement, the admissible portion of which is Ex.P.62. Personal search of A3 resulted in the recovery of M.O.24 (money purse); M.O.25 (a paper containing the address of the deceased); M.O.26 (a visiting card) and M.O.27 series (Rs.30/- consisting of three Rs.10/- denomination notes) under Ex.P.63. A3 then led the police party and the witnesses to a place known to him, from where, a knife (M.O.6 series) came to be recovered under Ex.P.64. A3 also produced M.O.30, a bag, from that place, in which, M.O.28, a blood stained green colour lungi and M.O.29, a full sleeves shirt, were available and they were recovered under Ex.P.65. A3 then led the police party and the witnesses to the crime scene. He also led the police party and the witnesses to his house, from where, he produced M.O.31 (notice), which was recovered under Ex.P.66 (search list). P.W.30, on prior information, arrested A4 at 6.00 a.m on 12.04.2002 on he being identified by the informant. At that time, A4 gave a voluntary confession statement. M.O.32, the scooter driven by A4, was recovered. Personal search of A4 resulted in the recovery of M.O.33 (money purse); M.O.34 (sacred ashes and kumkum); M.O.35 (photo of Lord Vinayaga) and M.O.36 series (a sum of Rs.45/- consisting of one note in the denomination of Rs.20/-; two notes in the denomination of Rs.10/- and one note in the denomination of Rs.5/-) and M.O.37 (a bit of paper containing the address of the deceased) under Ex.P.67. A4 led the police party and the witnesses to the crime scene. P.W.30 got sample signature from A4 in three papers, which are Ex.P.70. They were recovered under Form 95. Ex.P.71 is the paper containing the signatures of A3.

7. P.W.30 gave Ex.P.8 (requisition) to the Chief Judicial Magistrate on 12.04.2002 to conduct a test identification parade. On orders being passed, P.W.30 served summons (Ex.P.9 series) on P.Ws.5, 6, 28 and other witnesses to appear in the Central Prison at Salem. P.W.30 sent the case properties to the court along with Ex.P.40 (requisition) to subject the same for chemical examination. P.W.30 gave Ex.P.44 (requisition) to the court to send the handwriting/signature of A3 and A4 to the handwriting expert to be compared with the papers recovered from A3 and A4, each containing the address of Murugesan (since deceased). On 18.04.2002, P.W.30 arrested A5 in the presence of P.W.25 and another. At that time, A5 gave a voluntary confession statement, which was recorded. A5 was then sent for judicial remand. Further witnesses were examined by

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P.W.30. On 28.04.2002, on prior information, P.W.30 arrested A6 at about 11.30 p.m when he was riding his two wheeler bearing Regn.No.TN-38-3997 and examined him in the presence of P.W.25 and another. A6 gave a voluntary confession statement at that time, which was recorded. His two wheeler (M.O.38) was recovered under Ex.P.68. A6 then led the police party and the witnesses to the crime scene and then led them to his house, where, in the presence of witnesses, M.O.39 series came to be recovered under Ex.P.69 (search list). P.W.30 gave Ex.P.12 (requisition) to the court on 30.04.2002 to conduct a test identification parade to enable witnesses Mylsamy and Nagaraj to identify A6. (Mylsamy and Nagaraj are not examined in court). Ex.P.13 series are the summons served on the two witnesses. P.W.30 gave Ex.P.19 (requisition) to the court to examine P.Ws.2 to 7, 10, 16, 19, 28 and others under section 164 of the Code of Criminal Procedure. Ex.P.29 series are the summons served on the witnesses. P.W.30 examined further witnesses by recording their statements.

9. P.W.2 is an automobile broker by profession. P.W.4 is selling tomato in wholesale. P.W.4 wanted a lorry. P.W.2 knew that there is a lorry available for sale with P.W.20. P.W.3 is a friend of P.W.2. At 6.00 a.m on 28.03.2002, P.W.2, in the company of P.Ws.3 and 4, went to the place where P.W.20 is residing. There they did not find P.W.20 but found only his wife (P.W.8), who informed them that her husband had gone out. P.W.2 introduced himself to P.W.8 and explained the purpose for which he had come there. P.W.8 told P.W.2 to have a look at the lorry parked outside. The lorry was parked on the pathway next to the house of P.W.20. P.Ws.2, 3 and 4 examined the tyre and the general condition of the lorry. At that time, three persons passed them towards west and ten minutes thereafter, they heard a cry in pain from that side, which made P.Ws.2 to 4 run towards that place, where, they saw a person being stabbed by three persons. It was around 7.00 or 7.30 a.m. As the three persons were stabbing the victim, one among the three got a cut injury on the right hand. All the three were frightened and therefore they ran from the crime scene. All the three went to Palakad and then Chithoor in the look out for a lorry for purchase and they had their lunch at Palakad. At 5.00 p.m on that day, they returned home and at 8.30 p.m on that day, P.W.30 examined him, to whom, P.W.2 disclosed as to what he saw. P.W.2 would also state that when he was witnessing the occurrence, a few persons came running. But however, he did not know them. He asserted that he can identify the three assailants and in fact, he identified the three persons present in court i.e., the first three in the line to his left, as the persons involved in the crime. P.W.2 identified A1 and A2 in the test identification parade held on 23.04.2002. On 28.05.2002, he appeared before the court for being examined and then, on the direction of the court, he appeared again on 29.05.2002, on which day, he was examined under section 164 of the Code of Criminal Procedure. Ex.P.2 is the

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said statement.

10. P.W.3 is also an automobile broker by profession. As P.W.4 wanted to buy a lorry, on the occurrence day, P.Ws.3, 2 and 4 went to the house of P.W.20 to inspect the lorry. On P.W.2 asking for Marudhachalam (P.W.20), his wife (P.W.8) told them that her husband had gone out and they can inspect the lorry. As P.Ws.3, 2 and 4 were inspecting the lorry, three persons passed them towards west. Ten minutes after that, they heard a distress call. It was around 7.00 or 7.20 a.m. These three witnesses ran to a distant of 10 to 15 feet, where they found one person stabbing another on the back and again on the right side chest. Another person stabbed the victim on the centre of his back. The victim fell down and the said person was continuously stabbing him. At that time, the said assailant had received an injury on his right hand wrist. When the witnesses went towards them, they were criminally intimidated with dire consequences. Then the witnesses went to Palakad, from where, they went to Chithoor and returned home at about 6.00 p.m. At that time the Inspector of Police came and examined P.W.3 telling him that he had already examined P.W.2. P.W.3 identified A1 to A3 in the test identification parade held on 23.04.2002. The persons whom he identified in the prison are A1 to A3 present in court. M.O.6 series (three knives) are the knives used by the assailants on the date of the crime. P.W.4's evidence regarding his presence in P.W.20's house on that morning, is on the same lines as spoken to by P.Ws.2 and 3 and his evidence on the occurrence proper is also on the same lines as spoken to by the above referred to witnesses (P.Ws.2 and 3). His evidence also shows that one of the assailants, who was short and aged about 22 years or so, stabbed on the left side back of the victim. Another short person, aged about 23 years, stabbed on the right side chest of the victim. The third tall one stabbed on the centre of the back side of the victim and he may be aged about 25 years. All the three indiscriminately stabbed. The tall one was holding the victim while the other two were indiscriminately stabbing and at that time one such aim resulted in an injury on the right hand elbow of the assailant, who was tall. When the witnesses reached the crime scene after hearing the hue and cry, they were intimidated by the assailants. Then, he would depose, as spoken to by P.Ws.2 and 3 that all of them went to Palakad, from where, they went to Chithoor, since one automobile broker told them that there is a lorry available for sale at Chithoor. Then they came back to Palakad, where they had their lunch and then returned to their native place. At 9.00 p.m., the Inspector of Police examined these witnesses. In the test identification parade, he identified two persons. The witness identified A1 to A3 present in court as the persons whom he had seen as the assailants at the crime scene. A1 and A2 are the persons, whom he had identified in the test identification parade. Ex.P.4 is his statement recorded under section 164 of the Code of Criminal Procedure. M.O.6 series are the weapons used by the assailants at

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the crime scene. P.W.5 is having a Subscriber Trunk Dialling booth at Kovaipudur diversion. At 7.15 a.m on 28.03.2002, he went to Badrakaliamman Temple to offer prayers. The temple is close to his house. P.W.28, a resident of the same area, also came to the temple. P.Ws.5 and 28 were climbing down the stairs after worshipping the Goddess and at that time they saw Murugesan (since deceased) passing the temple with a bag hung on his shoulder. At that time P.W.5 heard somebody loudly proclaiming that a Muslim had been murdered in the town and as a retaliation, they are killing somebody. P.W.5 ran towards the place from where he heard the noise and there he found Murugesan lying in a pool of blood. Three persons in the age group of 20 to 25 years were running towards the road on the south. One was wearing a lungi and a shirt on his person while the other two were wearing pant and shirt respectively. P.W.5 was able to see only one among the three whom he could identify. Shocked at seeing Murugesan lying in a pool of blood, P.Ws.5 and 28 stood there itself. P.Ws.5 and 28 know that Murugesan is involved in RSS movement. Therefore they decided to inform P.W.15, the Secretary of the local BJP. However, they saw P.W.15 coming in the opposite direction. Two or three persons also came running with P.W.15. Those persons took the injured (Murugesan) to the hospital in a car. The car belongs to Subramani (uncle of Murugesan - not examined). P.W.1 went along with the injured to the hospital. P.W.5 came to know that Murugesan died in the hospital and therefore he went to the hospital, where, he observed the dead body. Police examined him at 11.00 or 11.30 a.m. P.W.6 is having a fruit shop in Kovaipudur division near Abirami Gas Company. P.W.6 normally opens her shop at 6.45 a.m and closes it at 10.00 or 10.30 p.m everyday. On 28.03.2002 as usual she opened the shop at 7.00 a.m. At that time she noticed opposite to her shop two red colour motor cycles and one blue colour scooter parked. She also noticed three persons standing near the vehicles, out of whom, one was wearing a lungi and having a small French beard. The said person was also wearing a shirt. He would be aged about 20 to 25 years. The other one was tall and he was wearing a pant and shirt. He would be aged about 25 years. The third one was a fair complexioned medium height person wearing a pant and shirt. All the three persons would be in the age group of 20 to 25 years. P.W.6 thought that they had come there to buy something in her shop. All the three were talking for about five minutes. All the three went towards Badrakaliamman temple through the pathway. A few minutes later, he saw people running on that passage shouting that Murugesan (since deceased) had been stabbed. P.W.6 noticed the assailants opposite to her shop around 7.00 or 7.05 a.m and at about 7.30 a.m on that day, he saw people running on that passage. P.W.6 also went towards Badrakaliamman temple, where, she found Murugesan lying dead in a pool of blood. There was 10 or 15 people, out of whom, P.Ws.5 and 28 were also there. P.Ws.5, 28 and others said that the assailants ran towards south. Murugesan's relatives came there and took him to the hospital. P.W.6 informed Murugesan's brother about what she saw

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stating that she can identify the three persons whom she had seen opposite to her shop. P.W.6 returned to her shop. At 8.30 a.m., she came to know that Murugesan had died. Leaving the shop in her son's charge, P.W.6 went to the hospital around 10.30 a.m. In the hospital, P.W.30 (Investigating Officer) was conducting inquest and during inquest, P.W.6 was examined. P.W.6 identified A1 to A3 in the test identification parade as the persons whom she had seen on the occurrence day opposite to her shop and then going on the pathway leading to the temple. P.W.6 also identified A4 in the test identification parade. Ex.P.5 is her statement recorded under section 164 of the Code of Criminal Procedure.

11. P.W.7 is having a laundry shop in Kovaipudur diversion. He opens the shop everyday at about 6.30 a.m. On the occurrence day also, he opened the shop likewise. Ramasamy, running a mess opposite to a private college, came near his shop, since his two wheeler (motor cycle) had some repair. Immediately thereafter, six persons came there in two red colour mopeds and one blue colour scooter and parked their vehicles near the fruit shop close to Abirami Gas Company. P.W.7 knows P.W.6. The shop of P.Ws.6 and 7 is separated by a distance of 100 feet. Three persons stood near the two wheelers themselves and the remaining three went in the pathway leading to Badrakaliamman temple. Two out of the three, who were standing there, left the place in a motor cycle and came back within five or ten minutes. All the three were talking among themselves. One among them went on the road leading to a residential area. It was around 7.15 a.m. The three persons, who had already left towards Badrakaliamman temple, came back in the same road followed by two persons among the three, who were originally standing near the scooter. One among the three was of a medium height with a fair complexion. The second one, who was neither tall nor short but of a medium height, had a bleeding injury on his right hand wrist. The person, who was already near the scooter, on seeing the five persons coming back to that place, started the scooter. All the six persons were talking for some time and then they left in the three scooters, each in different directions. Then, P.W.7 went to the private college to deliver to the students their ironed dresses and when he returned, he found a crowd near his shop. Only at that time he came to know that Murugesan (since deceased) had been stabbed. Out of fear and to avoid police enquiring him, P.W.7 closed his shop and went home. At 6.30 or 7.00 p.m on that night, police examined him and P.W.7 gave all the details. In the test identification parade, he identified the three persons, who went in the pathway leading to Badrakaliamman temple; A1 to A3 present in court are the three persons whom he saw going in the pathway leading to Badrakaliamman temple and it is those persons whom he identified in the test identification parade. Ex.P.6 is his statement recorded under section 164 of the Code of Criminal Procedure. P.W.8 is the wife of P.W.20. Her evidence would only show that P.Ws.2, 3 and 4 came to

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her house on 28.03.2002 at about 7.00 a.m to meet her husband (P.W.20) and since her husband was not available, she asked P.Ws.2, 3 and 4 to inspect the lorry which is parked by the side. She is not an eye witness to the occurrence. When she returned home after leaving her child in the school, she found a crowd in the pathway. Her husband (P.W.20) also returned home by about 9.00 or 10.00 a.m. Police examined them.

12. P.W.20 is the husband of P.W.8. On the occurrence day at 6.30 a.m., he left the house to buy some articles and returned home at about 9.00 a.m. He found a crowd at a distance of 50 feet from his house and when he asked his wife (P.W.8) about it, she answered that an automobile broker along with two persons came and inspected his lorry. P.W.20 went to the crime scene around 10.00 a.m., where he found a huge crowd and police personnel were there. P.W.20 witnessed the preparation of Ex.P.30, the observation mahazar. Then police left for the hospital asking P.W.20 and others to stay there itself. Police returned to the crime scene later on and at that time, some currency; mobile phone; key bunch; a pair of slippers; a knife cover; blood stained earth and sample earth came to be recovered under Ex.P.31 (mahazar). The recovered articles are M.Os.1 to 3 and 7 to 10. P.W.9 is a resident of Ramachettipalayam at Coimbatore. At 8.30 p.m on 27.03.2002 he went to a petrol bunk at Kuniyamuthur to fill up petrol for his moped motor cycle. After filling up petrol, he went to a hotel near a cinema theatre to take dinner. It was around 8.45 p.m. Then he went to the cinema theatre to see a film. As he used to smoke, he went to the northern side of the cinema theatre to smoke and he was standing there smoking. At that time he found a crowd of eight talking among themselves. Two motor cycles were found parked near them. However, he does not remember the colour of those motor cycles. Initially, he did not pay any attention to the conversation, since he thought that they were all friends. But in the mid-way, he heard them talking about the use of knife and therefore he started listening to the conversation. One among them was commanding the others stating that, by that night, xerox shop owner Murugesan (since deceased) should be finished. P.W.9 did not understand why such a plot was made. The person who gave such a command called Shajakhan (A2), Abu Thakir (A1), Sirajudeen (A3) by their names; verified as to whether they have knives and told them that since they have knives, they must finish the transaction. The same person also told others that they can keep watch. Nazar (A5) is the person who was giving such commands. P.W.9 already knows Nazar and he saw the others for the first time only on that day. P.W.9 identified A5 in court. He identified A1 to A3 as the persons who were called by their names by A5 on that day. A1 to A3 were armed on that day; P.W.9 can identify the other three persons who were also in the crowd and two among the three are not in court. There were two other persons in that crowd and they are A4 and A6. It was around 9.30 or 9.45 p.m. After giving the necessary commands,

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A5 crossed the road and left. The rest left the place in three motor cycles. P.W.9, after witnessing the night movie, went home. On 30.06.2002, P.W.9 was examined by the police.

13. P.W.10 is a resident of Sathyanagar at Parvathipuram, Coimbatore. He is a carpenter by profession. On 27.03.2002, after finishing his day's work, he went to a non-vegetarian hotel at 8.30 p.m for dinner. After dinner, he came out of the hotel in the company of his friend Ramachandran (not examined) around 9.00 p.m. At that time, he saw the six accused put up for trial standing along with Ashraf Ali (absconding accused) and Ibrahim Ali, whom he knows. They were standing a little away from the hotel. P.W.10 knows the names of all the six accused. A4 and A5 were talking a little distance away from the other accused. P.W.10 knows A4 and A5. P.W.10 heard them talking that they would again meet at 10.00 p.m on that night near Aruna Theatre in Kuniyamuthur. All the eight persons were in the procession of Sultan Meeran's funeral journey to the burial ground. P.W.10 heard A5 telling others that, on that night itself, Murugesan must be finished. (Sultan Meeran is shown to have been murdered on the night of 26.03.2002). All the eight persons left the scene and P.W.10 also boarded a bus to go to his house. P.W.10 was examined by the police on 30.03.2002. Ex.P.7 is his statement recorded by the Judicial Magistrate on 11.06.2002 under section 164 of the Code of Criminal Procedure.

14. P.W.11 was Judicial Magistrate No.3, Coimbatore, during the relevant time. On Ex.P.8/request given by the Investigating Officer, the Chief Judicial Magistrate, Coimbatore, passed an order to conduct a test identification parade. Accordingly P.W.11 issued Ex.P.9 series (summons) for witnesses to appear in the Central Prison at Salem at 11.30 a.m on 23.04.2002. P.W.11 issued Ex.P.10 (letter) to the Prison Authorities to make the necessary arrangements. She verified the presence of the witnesses with the summons issued. She verified with records the suspected persons to be identified. A1 was asked to stand in a line along with persons of similar features. P.W.13, the Doctor, identified A1 correctly. P.W.14, the nurse, also identified A1 correctly. P.Ws.13 and 14 identified A1 thrice correctly. Then all the accused were asked to stand in a line with persons of similar features in any place as they like. P.W.6 identified A1, A2, A3 and A4 correctly on all the three occasions. P.W.5 identified A2 twice correctly and on one occasion, he identified a different person. P.W.28 identified A1 and A2 twice correctly. P.W.2 identified on all the three occasions A1 and A2 correctly and another person. Witness Subramani (P.W.4) identified thrice correctly A1 and A2 and another unconnected person. The position of the suspected persons were re-arranged. They were also asked to change their dresses. Witness Rajendran (P.W.3) identified correctly A1 and A2 thrice. P.W.7 identified A1 to A3 correctly. P.W.16 could not identify anybody. Then P.W.11 questioned the

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identified accused whether they have anything to say? All the suspected accused stated that they were all photographed and videographed in the Chettipalayam Police Station. Ex.P.11 is the proceedings drawn by P.W.11 on the identification held. P.W.12, during the relevant time, was Judicial Magistrate No.6, Coimbatore. Ex.P.12 is the order passed by the Chief Judicial Magistrate to conduct the test identification parade and accordingly P.W.12 issued Ex.P.14 (proceedings) to the Jail Authorities to make the necessary arrangements. On 15.05.2002 at about 11.00 a.m., P.W.12 conducted the test identification parade. She verified the witnesses present with the records available; observed the necessary precautions and then made the suspected accused to stand in a line with persons having more or less similar features. Witness by name Mylsamy (not examined in court) identified A6. Witness Nagaraj (P.W.16) identified A6 correctly on all the three occasions. When P.W.12 asked A6 whether he had any complaints, he answered that in the police lock up he was shown to the witnesses. Ex.P.15 is the proceedings drawn by P.W.12 for conducting the test identification parade. P.W.13 is a private medical practitioner, before whom, at 7.45 a.m on 28.03.2002, A1 appeared for treatment stating that while attending to the repairs in a lorry radiator, he sustianed injuries on his right hand. P.W.13 identified A1 in the test identification parade. Ex.P.16 is the accident register issued by him and Ex.P.17 is the case sheet. A1 was discharged on his own request. P.W.14 is working as a Nurse under P.W.13. She assisted P.W.13 in treating A1. P.W.14 identified A1 in the test identification parade.

15. P.W.15 is in charge of BJP party at Coimbatore and he knows the deceased, who was having a xerox shop in the place where P.W.15 is residing. P.W.15 is having a small hotel. At about 7.30 a.m on 28.03.2002, a few people informed him that Murugesan is lying with stab injuries and east of the foot pathway near Badrakaliamman temple, he found Murugesan lying in a pool of blood with stab injuries. P.Ws.5 and 28 told P.W.15 that three persons, stating that they are taking revenge for the murder of their man, stabbed Murugesan and ran away. P.W.6 also told P.W.15 that in three two wheelers, a few people came and three out of those persons, after alighting from their scooter, went towards Badrakaliamman temple. Thangaraj and his uncle also came there. The injured was taken by P.W.15 and others to the Government Hospital. En route, P.W.15 informed the police over his mobile phone about this crime. P.W.15 left the crime scene at about 7.45 or 8.00 a.m on that day and within ten minutes after they left, he told the police about the incident over his mobile phone. At 8.30 a.m., they all reached the hospital, where the duty Doctor, pronounced Murugesan dead. At 8.45 a.m., P.W.29 (Sub-Inspector of Police) came to the hospital, who, by examining P.W.1, recorded his statement. P.W.15 was examined during inquest. P.W.16 is selling lottery tickets. As usual, at 7.00 a.m

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on 28.03.2002, he opened his shop and at that time he saw two persons coming in a red colour motor cycle. In a nearby tea shop, they wanted to know whether tea is ready? One among the two was 5-1/2 feet tall with a fair complexion and he had a muscular body. The other one had a beard and he was reasonably short with a moderate complexion. They will be between 23 and 24 years of age. They were talking in a low voice among themselves and then they left in their motor cycle. Sometime later, P.W.16 came to know that Murugesan had been stabbed and he also ran towards the crime scene, where, he found P.Ws.1, 15 and Murugesan's uncle there. Thinking that Murugesan was alive, they took him to the hospital. On the same night, P.W.16 was examined by the police. P.W.16 identified A6 in the test identification parade held on 15.05.2002. Ex.P.18 is his statement recorded under section 164 of the Code of Criminal Procedure by the Judicial Magistrate. P.W.17 was Judicial Magistrate No.4, Coimbatore during the relevant time. Pursuant to Ex.P.19 – order passed by the Chief Judicial Magistrate, he examined P.Ws.1 to 5 under section 164 of the Code of Criminal Procedure. Ex.P.5 (P.W.6), Ex.P.20 (P.W.28), Ex.P.2 (P.W.2), Ex.P.4 (P.W.4) and Ex.P.3 (P.W.3) are the statements recorded under section 164 of the Code of Criminal Procedure. He also examined P.W.7 and others and Exs.P.6 (P.W.7), P.21, P.22, P.18, P.23 and P.24 are the statements of other witnesses. He also examined further witnesses under section 164 of the Code and Exs.P.7 and P.25 to P.28 are the statements so recorded. Ex.P.29 series are the summons issued by him for examining all the witnesses referred to above.

16. P.W.18 is vending milk, which he sells in Kovaipudhur area and Kovaipudhur diversion area. He used to go in his TVS 50 Moped for selling milk. Between 6.45 a.m and 7.00 a.m on 28.03.2002 (occurrence day), he went to supply milk to one Paramasivam residing at Kovaipudhur diversion. He always finds a lorry parked on the way to the house of P.W.20. On that day, he saw three persons standing by the side of the lorry. After supplying milk to the house of Paramasivam, when P.W.18 returned, his vehicle stopped for want of petrol. At that time, he noticed two persons – one near the water tank and the other in the pathway leading to Badrakaliamman temple. Then he left. In the evening when he returned, he found a huge crowd in Kovaipudhur diversion area. He came to know about the occurrence and he was examined by the police. P.W.19 is the Village Administrative Officer of a particular area in Coimbatore. The Investigating Officer verified him as to whether A1 was residing in his area? After verifying, P.W.19 told him that such a person was not residing in the address given by the Investigating Officer. P.W.20 is the husband of P.W.8, who deposed that he is owning a lorry bearing Regn.No.TDL 7477. Since he had some financial problem in the year 2002, he decided to sell the lorry and in that context, he had informed two or three automobile brokers, including P.W.2 about the sale. At 6.30 a.m on 28.03.2002, P.W.20 left his house to

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Kuniyamuthur to buy some articles. Around 9.00 a.m., he returned and at that time, at a distance of 50 feet from his house, he saw a crowd. When P.W.20 asked his wife (P.W.8) as to why there was a crowd, she answered that along with a person, two persons came and inspected the lorry. After hearing about the occurrence, P.W.20 went to the crime scene around 10.00 a.m accompanied by his brother Paramasivam (not examined). The occurrence place is at a distance of 50 feet from his house and the lorry was parked 20 feet away from his house. Police was already there. He witnessed the preparation of Ex.P.30, the observation mahazar. Then, asking P.W.20 and others to stay in the same place and promising to come back, police went to the hospital and came back at about 1.00 p.m. P.W.20 witnessed the recovery of currency; mobile phone; key chain; hawai slippers; a knife cover; blood stained earth and sample earth under a mahazar as spoken to by P.W.30, the Investigating Officer. M.O.7 is the knife cover. M.O.1 is the bag. M.O.2 is the mobile phone. M.O.8 series are the key bunch. M.O.3 is the hawai slippers. M.Os.9 and 10 are blood stained earth and sample earth respectively. Ex.P.31 is the mahazar under which they were recovered. P.W.21 is the medical officer in the Government Medical College Hospital at Coimbatore. At about 7.15 a.m on 11.04.2002, A1 was brought before him by a police constable attached to the Investigating Police Station. P.W.21 examined A1 and at that time, A1 voluntarily stated that at 7.00 a.m on 28.03.2002 when he was walking on the road leading to Badrakaliamman temple, an unknown person came to attack him with a bottle and in self defence when he moved his right hand, he received an injury. A1 also told him that the assailant himself took him to the private hospital of P.W.13 at Madukarai and he (A1) was there in P.W.13's hospital from 7.15 a.m till 12.30 p.m. Ex.P.34 is the accident register.

17. P.W.30 sent the case properties to the court with a requistion to subject the same for chemical examination. P.W.22 is the Magisterial Clerk, who speaks about the receipt of the case properties received along with Ex.P.35 (requisition) given by the Investigating Officer. As an enclosure to Ex.P.36 (court's letter), the case properties were sent to the laboratory. Ex.P.37 is the chemical examiner's report and Exs.P.38 and P.39 are the serologist's reports. Ex.P.40 is another requisition given by the Investigating Officer on 26.04.2002 to the court to send some of the case properties to the laboratory. As an enclosure to Ex.P.41, those properties were also sent to the laboratory. Ex.P.42 is the chemical examiner's report and Ex.P.43 is the serologist's report. The Investigating Officer gave Ex.P.44 (requisition) to send the disputed signature to the expert for comparison with the admitted signature. As an enclosure to Ex.P.45 (court's letter), the signatures were sent to the expert. Ex.P.46 is the report of the handwriting expert and it contains reasons. P.W.24 is the Village Administrative Officer, who witnessed the arrest of A2. (He identified A2 in court) and his

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examination by the Investigating Officer as spoken to by P.W.30. A2 gave a voluntary confession statement, the admissible portion of which is Ex.P.50. Pursuant to Ex.P.50, a weapon, forming part of M.O.6 series, came to be recovered under Ex.P.51. Then, A2 led the police party and the witnesses to his house, where, under Ex.P.52 (house search list), M.Os.11 to 14 came to be recovered. P.W.25 is the Village Administrative Officer. At about 7.30 p.m on 10.04.2002, the Investigating Officer came to his house, which is close to Kuniyamuthur Bus Stand. Investigating Officer took P.W.25 with him and pointed out a person, who was already in his jeep. Investigating Officer examined the said person. The said person answered that his name is Abu Thaqir (A1) and on examination, he gave a voluntary confession statement. P.W.25 identified that person as A1 present in court. Ex.P.53 is the admissible portion of the confession statement of A1, pursuant to which, a knife, forming part of M.O.6 series, came to be recovered under Ex.P.54. Later on, under Ex.P.55 (house search list), M.Os.15 to 18 came to be recovered from the residence of A1. The arrested first accused (A1) was brought to the police station and then, all of them went to the Nursing Home of P.W.13 at Madukarai, where, P.Ws.13 and 14 were examined by the Investigating Officer. From that hospital, the Investigating Officer recovered M.Os.16 and 17 (medical records) relating to A1 under Ex.P.56 (Mahazar). The Investigating Officer asked P.W.25 to come on the next day.

18. On the next day, the Investigating Officer went to the house of A3, where, A3 was not found. Under Ex.P.57 (search list), M.O.19 came to be recovered from A3's house. Then, the Investigating Officer proceeded to the house of A5, where, under Ex.P.58 (search list), M.O.20 came to be recovered. A5 was not in the house at that time. From there, they went to the house of A4 and he was also not there. However, under Ex.P.59 (house search list), M.O.21 series came to be recovered. From the house of Ibrahim (absconding accused), M.O.22 series came to be recovered under Ex.P.60 (house search list). The above named accused was not in the house. From the house of one Ashraf Ali, M.O.23 series came to be recovered under Ex.P.61 (house search list). A3 was arrested at about 9.00 p.m on 11.04.2002 and examined. Ex.P.62 is the admissible portion of the confession statement of A3, pursuant to which, M.Os.24, 25, 26 and M.O.27 series came to be recovered under Ex.P.63. Pursuant to Ex.P.62, one of the knives, forming part of M.O.6 series, also came to be recovered under Ex.P.64. M.Os.28 to 30 also came to be recovered pursuant to Ex.P.62 under Ex.P.65. Then, the police party went to the house of A3, from where, M.O.31, produced by A3, was recovered under Ex.P.66. At 6.00 a.m on 12.04.2002, on being identified, A4 was arrested. His examination resulted in the recovery of M.O.32 (scooter) and recovery of M.Os.33 to 37 under Ex.P.67. The arrested accused were taken to the police station. At 12.00 noon on 15.04.2002, A5 was arrested, on being identified by the informant, and examined. On 28.04.2002, on being identified, A6 came

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to be arrested and examined. His examination resulted in the recovery of M.O.38 (scooter) under Ex.P.68 (mahazar). Then, A6 took the police party and the witnesses to his house, from where, M.O.39 series came to be recovered under Ex.P.69 (house search list). P.W.26 is the scientific expert in the laboratory. As an enclosure to Ex.P.45 (court's letter), M.Os.31 and 37 (letters) and sample letters stated to have been recovered from A4 and A3 were received by his office. Ex.P.70 is the sample handwriting of A4. Ex.P.71 is the sample handwriting of A3. The expert was asked to examine the signature in Exs.P.70 and P.71 with M.Os.31 and 37. The sample signature in Ex.P.70 tallied with the contents of M.O.37 and likewise, the sample signature in Ex.P.71 tallied with the contents of M.O.31. Ex.P.46 is the report of the expert.

19. P.W.27 is residing at Sundarapuram. At about 8.00 a.m on 28.03.2002, he was standing in the bus stop at Kuniyamuthur. A5, whom he knows earlier, was also standing in that place at that time. P.W.27 identified A5 in court also. A little later, a 25 year old person and a tall person came in a blue colour scooter and were talking to A5. In a red colour motor cycle, Ashraf ali and A3 came. P.W.27 already knew A3. He identified Siraj as A3 present in court. He would also state that Ashraf Ali is not in court. He noticed all the four persons talking. At that time, he heard the tall person, who came in the scooter wearing a colour shirt, telling A5 that everything is already over. Ashraf Ali, leaving Siraj (A3) left the place. Sometime later, in a blue colour scooter, A6 and another person by name Ibrahim came. He can identify them. A6 present in court was the person whom he saw on that day. Ibrahim is not in court. Both A6 and Ibrahim left. Those who were already there also left. P.W.27 was examined by the Investigating Officer on 29.03.2002. Ex.P.23 is his statement recorded under section 164 of the Code of Criminal Procedure. P.W.30 came to know that the absconding accused (Ibrahim) and Ashraf Ali are residing at No.3, Angappa Naicken Street, Chennai. Therefore P.W.30 submitted Ex.P.77 to the court for permission to search that house. However, since he came to know later on that the absconding accused were not there in that house, he did not search that house. After completing the investigation, P.W.30 filed the final report in court against the accused on 08.07.2002 under sections 147, 148, 341, 302, 302 read with 109 and 149 and 120-B I.P.C.

20. When the accused were questioned under section 313 of the Code of Criminal Procedure on the basis of the incriminating materials made available against each one of them, they denied each and every circumtance put up against them as false and contrary to facts. A1 to A3 filed a joint written statement stating that they do not belong to any religious group or association; on 30.03.2002, they were taken to the Investigating Police Station, where, their personal details were obtained; one week later, police forcibly took their

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sample handwriting and signatures in various papers; several books and articles were recovered from their house contrary to law; A1 and A2 were taken to the residence of the Judicial Magistrate at 7.30 p.m on 11.04.2002 and A3, at 7.30 p.m on 12.04.2002; at about 6.30 a.m on 28.03.2002 when A1 was attending to a repair work by opening the bonnet of the vehicle, the blade of the radiator fan accidentally hit him resulting in an injury on his right hand wrist, for which, he took treatment in the hospital of P.W.13; police are making use of those hospital records and that A1 to A3 have no connection whatsoever with Murugesan's murder. A4 had filed a separate written statement denying the entire prosecution case. He also denied his arrest as spoken to by the Investigating Officer. He would state that his signatures were forcibly taken by the police in some papers and that the scooter stated to have been recovered from him does not belong to him at all. According to him, he was taken to the police station on 06.04.2002 itself, where, by illegally detaining him, his signature was taken in a number of papers. The signatures sent to the expert for comparison were all forcibly taken from him. Since A4 was taken into illegal custody on 06.04.2002 itself, his mother gave a telegram on 11.04.2002 to the Investigating Officer and he had enclosed a copy of the telegram. According to A4, he was photographed and videographed in the police station, which were shown to the witnesses. A5 filed a written statement stating that he had been falsely implicated because, he is a Muslim by religion. According to him, he was also taken into police custody long before the arrest shown and while in such illegal custody, his signature was taken in several papers. He would deny having given any confession statement to the police leading to the recovery. A6 also filed a separate written statement contending that he had been falsely implicated in this case because, he is a Muslim by religion. He denied the entire prosecution evidence as false and denied his arrest as spoken to by the Investigating Officer. He denied having given any confession statement and denied the recovery as well. He would also state that his signature had been taken by using force in several papers and that he has no connection whatsoever with the scooter shown to have been recovered from him. He would state that he was taken into illegal custody on 16.04.2002 and that his wife had given a telegram on 22.04.2002 complaining about illegal custody to the State Human Right's Commission. Police have clandestinely removed the copy of that telegram from his house. He would state that he was shown to the witnesses in the police station.

21. D.Ws.1 to 4 were examined on the side of the defence. D.W.1 would state that he has been driving heavy vehicle over the past twenty years and he knows A1, who was a cleaner under him for 10 or 12 days. About 20 months prior to he giving evidence in court (he gave evidence in court on 09.12.2003), A1 was working under him as a cleaner in his lorry for 10 or 12 days. According to him, on the occurrence day when he left for Palakad in his lorry, A1 was working

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as a cleaner under him. Around 6.00 or 6.15 a.m at Madukarai, the water pump connecting the radiator got cut. Immediately D.W.1 stopped the lorry and asked A1 to open the bonnet, to verify from where water is leaking? A1, holding the opened bonnet in his left hand, put his right hand inside the engine, at which point of time, the fan blade of the radiator caused injury on A1's right hand wrist. A1 also received an injury on his left hand. Since A1 was having a bleeding injury, D.W.1 took him to the hospital of P.W.13 at Madukarai around 6.45 a.m., where, there was a nurse. D.W.1 took the telephone number given by A1 and made a call to that number informing that A1 had been admitted in the hospital. D.W.1 was in P.W.13's hospital for about 15 minutes and then leaving A1 in the hospital itself, D.W.1 proceeded on his journey, after informing A1's parents. Ten or twenty days later when he returned, he came to know that A1 had been arrested by the police. D.W.2 is having a clinical laboratory at Kottamedu in Coimbatore. D.W.2 knows A1. On 03.09.2003, he gave Ex.D.1 - his blood group report. A1's blood group is "A" positive. D.W.3 is not only a photographer but also a videographer and he works as such from his house at G.M.Nagar, Ukkadam, Coimbatore. On 05.09.2003, he photographed the crime scene near Badrakaliamman temple at the request of A3. Four days prior to he taking photographs, he videographed that area. Defence material objects 1 to 10 are the photographs he had taken. D.W.4 is working in a place very close to his house and he knows A1, who is none else than D.W.1's uncle's son. A1 resides close to D.W.4's house. On 28.03.2002 morning, as usual, he opened his office. At about 7.15 a.m., he received a phone call from P.W.13's hospital and D.W.1 spoke to him on the phone stating that A1 had suffered an injury; he had been admitted in the hospital at Madukarai and A1's house may be informed about that. Accordingly, D.W.4 telephoned to A1's house and then went to his house. Since D.W.4 did not have any money at that time, only at 9.00 a.m he and A1's mother went to the hospital, from where, A1 was got discharged. D.W.4 paid the hospital charges to P.W.14.

22. Mr.B.Sriramulu, learned senior counsel appearing for A1 mainly contended that, but for the evidence of P.Ws.2 to 4, the prosecution cannot succeed in getting a conviction for A1 to A3. By taking us through the evidence of P.Ws.2 to 4, it is argued by the learned senior counsel that when it is shown that P.W.4 is selling tomatoes in wholesale, it is highly unbelievable that P.W.4 would be in a position to buy a lorry. The very purpose of P.Ws.2 to 4 meeting together on that day to go to the house of P.W.20 is shown to be in the context of buying a lorry for P.W.4. If the capacity of P.W.4 to buy a lorry could be easily doubted, then the evidence of P.Ws.2 to 4 that they joined together and went to the house of P.W.20 on the occurrence day morning, which alone had enabled them to see the occurrence, can be easily disbelieved. Though in the rough sketch prepared, the lorry, which P.Ws.2 to 4 claim to have

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inspected, is shown, yet, in the observation mahazar, the noting of the presence of the lorry at the crime scene appears to be only by way of an interlineation. The prosecution had failed to establish whether P.W.20 had any lorry at all with him for sale. The evidence of P.Ws.8 and 20 also would not inspire the confidence of this court to conclude that P.W.20 had a lorry with him for sale. Though P.Ws.2 to 4 are shown to have been examined on the occurrence day itself, yet, the statement recorded from them had reached the court belatedly. Therefore, when records of non-material value, which according to the prosecution had come into existence on the day of the occurrence itself, had reached the court on the next day, then there is no reason at all as to why the statement of key witnesses for the occurrence proper namely, that of P.Ws.2 to 4, had been sent only after a long time to the court. This raises a serious suspicion about the prosecution case as to whether P.Ws.2 to 4 could have been eye witnesses at all. The evidence of various witnesses that they have identified A1 to A3 in the test identification parade and court, is far from convincing and in any event, there are materials to show that all the witnesses were shown to A1 to A3 as well as to the others prior to the test identification parade. When the identity of A.1 to A.3 is doubtful then it is not possible to conclude that A1 to A3 alone participated in the murderous attack on Murugesan. The arrest and recovery at the instance of A1 and from A2 and A3 also, is not free from doubt. All the accused have been taken into illegal custody by the police on suspicion long prior to the actual arrest shown and only while they were in such illegal custody, police, using third degree methods, got statements, signatures and handwritings from the accused and therefore no credibility at all could be attached to the case built by the prosecution on such materials. Mr.B.Sriramulu, learned senior counsel, by taking us through the evidence of D.Ws.1 to 4, would argue that A1's presence at the crime scene is doubtful and this evidence explains the circumstance under which A1 had come to sustain the injury. Mr.S.Shanmugavelayutham, learned counsel (now learned senior counsel) would adopt the arguments of Mr.B.Sriramulu learned senior counsel. Mr.V.Gopinath, learned senior counsel appearing for A4 to A6 would state that they were put up for trial only on the basis of the criminal conspiracy stated to have been hatched between all the accused on a particular day. To sustain the offence under section 120-B I.P.C, P.Ws.9 and 10 alone have been examined. P.W.9 had come to be examined on 30.06.2002, by which time, much water had flown under the bridge and therefore his evidence cannot be accepted at it's face value. In addition to that, P.W.9's statement recorded during investigation had also reached the court belatedly. By taking us through the entire evidence of P.W.10, learned senior counsel would contend that there are inherent improbabilities in his evidence, which would easily enable this court to disbelieve his evidence. If the evidence of P.Ws.9 and 10 is disbelieved by this court, then, the prosecution case on criminal conspiracy must fail. It is not the prosecution

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case that A4 to A6 also participated in the actual crime. According to the prosecution, only three persons participated in the crime. None had identified A4 to A6 as the assailants present at the crime scene. Under these circumstances, learned senior counsel appearing for A4 to A6 would contend that there is no legal evidence at all against the above named accused to connect them with the crime and if that is so, then, they must be acquitted. Mr.N.R.Elango learned Additional Public Prosecutor would contend that P.Ws.2 to 4 came to be examined only in the late evening of 28.03.2002. They were not examined during inquest. The police officer had sent the inquest report and the evidence of the witnesses examined during inquest alone to the court on the next day. Examination of P.Ws.2 to 4 alone had given some clue about the identity of the assailants and the failure on the part of the Investigating Agency to send the statement of P.Ws.2 to 4 recorded during investigation immediately, cannot be taken serious note of in doubting the prosecution case, especially when the evidence of P.Ws.2 to 4 is found to be natural, reliable and trustworthy. There is evidence to show that the entire Coimbatore City was in great turmoil, tension and in the grip of fear and those factors cannot be totally lost sight of in evaluating the prosecution case on the accusation of the defence that the statements of P.Ws.2 to 4 were sent belatedly to the court. Learned Additional Public Prosecutor wanted us to believe the evidence of P.Ws.9 and 10, which unerringly establishes the conspiracy charge. He would also submit that the evidence of D.Ws.1 to 4 is far from convincing.

23. In the light of the submissions made by the learned senior counsel appearing for A1; learned senior counsel appearing for A2 and A3; learned senior counsel appearing for A4 to A6 and the learned Additional Public Prosecutor appearing for the State, we went through the entire materials available on record with utmost care and caution. In sum and substance, the prosecution case is that, to take revenge for the murder of a person in their community by Hindus, all the accused, along with the absconding accused (two in number), hatched a conspiracy at 9.00 p.m and 10.00 p.m on 27.03.2002 at two different places and in continuation thereof, forming themselves into members of an unlawful assembly, A1 to A3, after wrongfully restraining Murugesan, murdered him. A1 to A3 stand charged directly under section 302 I.P.C; A4 and A6 stand charged under section 302 read with section 149 I.P.C and A5 stands charged under section 302 read with section 109 I.P.C. There is also a conspiracy charge against A1 to A6; a charge under section 148 I.P.C against A1 to A3 and a charge under section 147 I.P.C against A4 and A6. The prosecution had also let in evidence to show that, after hatching the conspiracy on the occurrence day morning, the accused assembled at a particular place; from there, three accused alone proceeded to the crime scene, where, Murugesan was fatally attacked and the accused re-assembled in the same place where they originally met, from where, they made good their escape. In our considered opinion, the

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prosecution case could be easily compartmentalised into three parts namely, conspiracy, constitution of an unlawful assembly and lastly, the actual murder.

24. Let us now examine the prosecution case on conspiracy. Two witnesses have been examined to prove that the accused hatched a conspiracy. Those witnesses are P.Ws.9 and 10. We take up their evidence to find out whether it establishes the prosecution case that a conspiracy was hatched. It is not in dispute that P.W.9 came to be examined for the first time during investigation only on 30.06.2002 and the statement shown to have been recorded from him on that day during investigation had reached the court only on 13.02.2003 namely, along with the final report. P.W.9 is definitely a key witness. This court, right from the judgment reported in 1974 L.W.Crl.Pg.190 (Karunakaran Jabamani Nadar In Re.), had been insisting that the Investigating Officer has a duty to send the statements recorded from witnesses, that too of the key witnesses, to the court then and there so as to avoid a possible criticism by the defence at a later stage that the witness is a concocted witness. Though the law laid down by this court as early as in the year 1974 had passed the test of time namely, 32 years, yet, we are surprised to find that the Investigating Officers, that too in a murder case, do not even bother to send such statements of important witnesses to the court without any delay. But, despite the examination of P.W.9 almost three months after the crime and the delay in sending his statement to the court as referred to above, we wanted to satisfy ourselves as to whether P.W.9 could be treated as a reliable witness? We have already extracted his evidence in the earlier portion of this judgment, which shows that he heard the persons assembled at that time conspiring to commit an offence namely, to kill Murugesan and A1 to A3 were assigned to do that job. According to him, he went to fill up petrol for his TVS 50 Moped motor cycle to a petrol bunk at Kuniyamuthur at 8.30 p.m on 27.03.2002, from where, he went to a hotel near a cinema theatre for dinner and after finishing his dinner, he was standing opposite to the cinema theatre at about 8.45 p.m to buy a ticket for seeing the late night movie. His evidence shows that he moved to the side lane to smoke and at that time he saw a group of eight persons talking among themselves. This means – giving allowances regarding his perception of time – that P.W.9 could have seen the group of eight by about 9.00 p.m or so. Therefore it is not possible to accept his evidence that he watched the group talking among themselves only between 9.30 and 9.45 p.m., since it is not his evidence that the group of persons came only later. Probably, this evidence is to fall in line with the evidence of P.W.10. He would then state that one among the eight is Nazar by name and the said Nazar is A5 in court. A5 called A1, A2 and A3 by name and therefore P.W.9 had come to know and remember the names of A1 to A3. He had admitted in his evidence in cross that he did not know the name of A5 prior to the occurrence and that, he did not know where A5 resides.

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He had also admitted that prior to 27.03.2002, he had never even talked to A5. He had further admitted that, except giving the personal identifying features of A5, he did not give the identifying features of the other accused.But however, he had given the names during investigation, which names he came to know by reading a newspaper. According to his evidence, initially he was not paying his attention to the conversation of the eight but when in mid-way they were referring to the use of a knife, he started paying attention to the conversation. He then states that he did not know the name of the lane where he was standing and the name of the hotel where he had gone to take the dinner. As noted earlier, he was examined for the first time by the police only on 30.06.2002. He then added that within 15 or 20 days after the murder, he saw in a newspaper the names of all the accused and only on seeing that, he came to know that only those persons murdered Murugesan. He had admitted that, even after seeing the newspaper as referred to above, he did not inform the police till such time he was enquired by the police on 30.06.2002.His evidence in cross also shows that he was enquired by the police by showing photographs and even in the police station he saw the photographs. At the fag end of his cross examination, he had also stated that prior to 27.03.2002, he had not seen A1 to A3 at all.This witness had not participated in the test identification parade. On top of this, P.W.30, the Investigating Officer, had admitted that during investigation P.W.9 did not tell him that the accused were standing near the lane north of the cinema theatre and were talking. P.W.30's evidence also shows that P.W.9 did not tell him that among the eight, one was telling others in a commanding voice. Having an overall view of the evidence of P.W.9 and the fact that he came to be examined for the first time almost three months after the crime and in the context of his statement reaching the court along with the final report, we have a serious doubt in our mind as to whether this person would have been there as claimed by him and heard the conspiracy and so we reject his evidence.

25. Now we will go to the evidence of P.W.10. This witness is shown to have been examined on 30.03.2002 i.e., two days after the occurrence. But however, his statement so recorded had also reached the court only on 26.04.2002. P.W.10's evidence is that, at or about the same time namely, at 9.00 p.m on the same night (i.e.) 27.3.2002, he watched the accused put up for trial along with the absconding accused standing and talking a little away from the non-vegetarian hotel, where, this witness had gone to take dinner. The prosecution had not explained as to how the same group of persons would have been seen more or less at the same time by P.W.9 at a different place and P.W.10 at a different place. The prosecution had not even let in evidence to show that the place where P.Ws.9 and 10 saw the accused talking among themselves is the same place or in close proximity to each other. P.W.10's evidence is that, he knows the names of all the six accused and out of the six, A4 and A5 were standing a little away and talking. P.W.10's evidence is that, he

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heard the accused talking among themselves that they would meet near Aruna Cinema Theatre at 10.00 p.m. We have already noted that P.W.9 had stated in his evidence that, after taking his dinner at about 8.45 p.m when he came before the cinema theatre, he saw the accused there. According to P.W.9's evidence, he saw the accused talking among themselves between 9.30 and 9.45 p.m and on this evidence we have already expressed our doubt. Whatever it is, we wanted to examine P.W.10's evidence on it's own merits. P.W.10's evidence is that, he knows all the six accused by name and he knows A4 and A5 personally also. According to his evidence, he heard the accused deciding to meet near Aruna Theatre at Kuniyamuthur at 10.00 p.m (the prosecution through P.W.9's evidence had brought that at about 9.30 to 9.45 p.m near Aruna Theatre, he saw them and we have already expressed our reservation on that evidence). We find that if really the accused wanted to hatch a conspiracy and when all of them have assembled near the hotel as spoken to by P.W.10, we see no reason at all as to why they did not hatch the conspiracy at that time but wanted to postpone it. P.W.10 would further state that A5 at that time told the others that on that night itself Murugesan must be finished and then they left.From the evidence of P.W.10, it is clear that he is not a stranger to the accused. If that is so, then, the normal conduct of a person like P.W.10 in that given situation would be to go and mingle with his friends. In this case, P.W.10 had not done any such thing. This raises a serious suspicion in our mind as to whether P.W.10 knew that the accused are going to conspire and therefore he must watch them discreetly. Though he asserted in his cross examination that he told the Magistrate, when he was examined under section 164 of the Code of Criminal Procedure, that he heard A5 commanding others that Murugesan must be finished on that night itself, yet, we find from Ex.P.7 (his statement) that he had only mentioned that all the eight accused were found talking in secrecy and nothing more. P.W.30, the Investigating Officer, had also admitted that during investigation P.W.10 did not disclose to him that A5, at the time of hatching the conspiracy, openly said to the other accused that Murugesan must be finished that night itself. As we have noted earlier, P.W.10 had admitted that he is acquainted, to a certain extent, with the accused and he used to talk to them whenever he sees them. If such is the acquaintanceship, we see no reason at all as to why, we reiterate, P.W.10 did not mingle with those known people at that time. According to him, his friend, who was with him at that time (the said friend is not examined), went to the police station to disclose the details about the conspiracy. P.W.10 had also admitted that the Investigating Officer did not send for him but on the other hand, when he saw the Investigating Officer on 30.03.2002 in the Kovaipudhur diversion road, on his own he went and told him. He had admitted that he did not disclose to the police the identifying features of any of the accused and only from the paper, he came to know that two persons have been arrested. In the light of our discussion referred to above, we find that P.W.10's

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evidence also cannot be relied upon easily at it's face value. Since the prosecution relies upon the evidence of P.Ws.9 and 10 only to establish the theory of conspiracy and as we have found both of them to be unreliable, we have to necessarily hold that the prosecution had failed to establish the offence under section 120-B I.P.C. Accordingly, A1 to A6 are acquitted of the offence under section 120-B I.P.C and the fine amount, if any, paid by each one of them for that offence is directed to be refunded to them.

26. The next broad aspect of the prosecution case is, the accused forming themselves into members of an unlawful assembly – some of them namely, A1 to A3 armed, to murder Murugesan. We have to remember that even if the prosecution fails in establishing the case of criminal conspiracy, yet, if they establishes that there was an unlawful assembly, of which the accused were members; that unlawful assembly had the object of committing a crime namely, killing Murugesan and in accomplishing that object, Murugesan is murdered by all the accused participating or only a few participating, the prosecution can always succeed. By examining the evidence, let us first find out whether there was any unlawful assembly at all? Accepting for the present that P.Ws.2 to 4 have seen the crime, even then, it only shows that there were three assailants who murdered Murugesan. It is not necessary that the prosecution must establish that at the scene where the crime is committed, there was an unlawful assembly. In our opinion, unlawful assembly, with an object to commit the crime, may be formed at a totally different place and it is possible for a few members of that unlawful assembly to move and then commit the crime at a different place. But one thing must be definitely established namely, there was an unlawful assembly; that unlawful assembly had the object of committing a crime and in pursuance of the same, the crime itself was committed. There should be nexus between the unlawful assembly and the actual commission of the crime. As we have noted earlier, the evidence of P.Ws.2 to 5 and 28 establish only three assailants participating in the crime. Therefore, let us find out from the other evidence available, whether an unlawful assembly infact existed at any time prior to the actual commission of the crime without the severance of the nexus. To arrive at a decision on the above aspect, we have the evidence of the witnesses, which we are going to discuss hereunder.

27. P.W.6 is having a fruit shop near Abirami Gas Company at Kovaipudhur. We have already extracted her evidence. In sum and subtance, her evidence shows that at about 7.00 a.m on the occurrence day when she opened the shop, she found three persons standing there near three motor cycles and that all the three left in the foot pathway leading to Badrakaliamman temple. According to her, she identified four persons in the test identification parade conducted by the Judicial Magistrate and A1 to A3 present in court are the persons who went in the foot pathway leading to Badrakaliamman temple

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on the occurrence day and the fourth person identified by her in the test identification parade is A4, whom she found talking with the other three persons opposite to her shop. Therefore, at the best, her evidence shows that four persons assembled near her shop, out of whom, three went towards Badrakaliamman temple. Her evidence also shows that within a short time after the three persons proceeded towards Badrakaliamman temple, she heard that Murugesan had been done to death. To constitute an unlawful assembly, there must be five or more persons. Therefore, the evidence of P.W.6 definitely falls short of the necessary ingredient of section 141 of the Indian Penal Code.

28. Next comes the evidence of P.W.7. P.W.7 is having a laundry shop, which is at a distance of 100 feet from the fruit shop of P.W.6. He states that he knows P.W.6. According to him, around 6.30 a.m on the occurrence day when he opened the shop, he noticed six persons coming in three two wheelers and then standing near the shop of P.W.6. Even in this context, we want to note that P.W.6, who is very close to the place where the assailants were stated to be standing, would only state that only three persons were standing there. According to P.W.7, out of the six, three stood in that place itself while the other three went in the foot pathway leading to Badrakaliamman temple and two out of the remaining three, went in their motor cycle towards east and came back within five or ten minutes. Thereafter, one went towards the area where there was a overhead water tank and the other one went in the road leading to a residential area. It was around 7.15 a.m. Then the three persons, who first left the scene, came back running followed by two persons who left later. We want to note here that P.Ws.6 and 7 are not eye witnesses to the crime. They have been examined by the State probably to establish that there was an unlawful assembly. P.W.7 had identified only three persons in the test identification parade conducted by the Judicial Magistrate and those identified assailants are A1 to A3. In our considered opinion, the evidence of P.W.6 as to how many assembled near her shop deserves acceptance because, admittedly P.W.7 also states that the suspected persons stood only opposite to the shop of P.W.6 and therefore she would have been in a better position to see how many came there. In the face of that evidence of P.W.6, we are of the considered opinion that the evidence of P.W.7 as to how many assembled before the fruit shop of P.W.6 is open to a very serious doubt. P.Ws.6 and 7 do do not say in their evidence whether any of the persons who had assembled there – according to P.W.6 three persons and according to P.W.7 six persons – were armed. Since we have held that the conspiracy charge had collapsed, even if we accept the evidence of P.W.7, it would only show that six persons assembled. From the evidence available on record, we are not able to even infer that the said assembly – assuming we accept the evidence of P.W.7, which we have rejected earlier – had any unlawful object in their mind. So is our

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conclusion from the evidence of P.W.6 also. We may note at this stage that the evidence of P.Ws.2 to 5 and 28 is that, only three persons attacked Murugesan. There is evidence of yet another witness namely, the evidence of P.W.16, to test the prosecution case on unlawful assembly. His evidence shows that he is having a lottery shop in Kovaipudhur and on the occurrence day, as usual he opened the shop at 7.00 a.m. He noticed two persons coming to a nearby tea shop for taking tea. In another scooter, one person came, who started conversing that the two persons, who had already come there, and then they left. This witness says that in the test identification parade he identified A6. In our considered opinion, the evidence of P.W.16 leads the prosecution case to no-where. P.W.27 in his evidence would state that at about 8.00 a.m on 28.03.2002 when he was standing in the bus stop at Kuniyamuthur, he saw A5 (Abdul Nazar) standing near him. At that time, in a blue colour scooter, two persons came and were talking to A5. At that time, in a red colour scooter, A3 and another person by name Ashraf Ali came, of whom, he knew A3 already. All the four were talking and one tall person among the four told A5 that everything is over. So, it is clear that P.W.27 speaks about meeting of five persons - according to him - after the event was over. He does not speak about who the fifth person is? Evidence of P.W.27 then shows that Ashraf Ali left the place and after some time A6 came in a blue colour scooter and one Ibrahim came in a red colour scooter. According to him, Ibrahim is not in court. Then all left. This witness had not participated in the test identification parade at all. It is in evidence that even before such meeting, the crime had been committed. Existence of an unlawful assembly must be shown before the crime. The prosecution had not established that after the crime, the unlawful assembly, if any, had any common object.

29. In the light of our discussion referred to above on the available materials, we have no doubt at all that the prosecution had definitely failed to establish that there was an unlawful assembly on 28.03.2002 having a common object to commit a crime and in accomplishing that object of the unlawful assembly alone, Murugesan had been murdered in this case. Accordingly, we acquit A1 to A3 of the offence under section 148 I.P.C and A4 to A6 of the offence under section 147 I.P.C. The fine amount, if any, paid by them for the said conviction, is directed to be refunded to them. Since we have held that the prosecution had not established any unlawful assembly having a common object to commit a crime on the date of the occurrence, pursuant to which only Murugesan was murdered, we are inclined to acquit A4 and A6 of the charge under section 302 read with section 149 I.P.C. The fine amount, if any, paid by each one of them is directed to be refunded to them. A5 stands convicted under section 302 read with section 109 I.P.C. We have disbelieved the prosecution case on conspiracy and on unlawful assembly and the only evidence available against A5 is that, in the course of conspiracy, A5 directed A1 to A3 to commit the murder. Since we have already

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disbelieved the prosecution case on conspiracy charge and since there is no other evidence to show in which way A5 abetted the commission of the crime, we are inclined to acquit A5 of the offence under section 302 read with section 109 I.P.C and accordingly, he is acquitted of the said offence. The fine amount, if any, paid by him for the said conviction is directed to be refunded to him.

30. The prosecution case that survives for consideration at this stage is, the conviction of A1 to A3 under Sections 341 and 302 I.P.C. To prove these charges, the prosecution primarily relies upon the oral evidence of P.Ws.2 to 4. The presence of P.Ws.2 to 4 at the occurrence time is seriously contested by the learned senior counsel by stating that there is no evidence to show that P.W.20 was owning a lorry and that P.W.4 had the capacity to buy a lorry. If that is accepted, learned Senior Counsel would contend, then there was no need at all for these witnesses to be present at the crime scene. It is then argued by learned senior counsel that if really P.Ws.2 to 4 are eye witnesses to the crime, then there is no reason at all as to why they have not given a complaint to the police immediately after the occurrence. But on the other hand, their evidence is that, out of fear, they ran away from the crime scene and admittedly, they have come to be examined only on the night of 28.03.2002. It is then argued by learned senior counsel that the statements of these three important witnesses have not been sent to the court at least by the next day, but only belatedly when the statements of non-material witnesses were sent to the court either on the same day of the occurrence or within a short time thereafter. This lapse on the part of the police officer would definitely enable this court to doubt the evidence of P.Ws.2 to 4. These three witnesses, namely, P.Ws.2 to 4, identifying the assailants in the test identification parade is also not free from doubt. Having these aspects in our mind, let us examine their evidence. P.W.20 is the husband of P.W.8. P.W.4 states that he is vending tomatoes. Of course, there is no evidence to show about the volume of his business. But however, it is stated by him that he want to buy a lorry and for that purpose, he had given some indication to the automobile broker, namely, P.W.2. P.W.3 also appears to be an automobile broker. We went through the evidence of P.W.20. Since, it is argued by learned senior counsel that P.W.20 had not established that he had a lorry with him, which was available for sale, we will first examine his evidence in the light of that argument. Of course, the registration certificate of the said lorry had not been produced. But P.W.20 had given evidence that as the lorry is subject to a hire purchase transaction, registration certificate is with the financier. Of course, we expect the investigating officer to probe further to find out whether P.W.20 had atleast the xerox copy of the registration certificate. But he had not done it. But that does not necessarily mean, namely, absence of registration certificate of the vehicle, that P.W.20's evidence is false. P.W.20 had given the name of the financier as

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Narmada Financier at Salem. In Ex.P.74, the rough sketch, the lorry is shown to be parked close to the house of P.W.20. Even the lorry number had come to be given and this rough sketch was prepared on 28.03.2002 itself. The crime scene is very close to the place where the lorry is parked. A perusal of Ex.P.30, the observation mahazar shows that the lorry was found parked in that area. An argument is made by learned senior counsel by taking us through the original of Ex.P.30 that only by way of an inter-lineation or addition, the parking of the lorry in the crime scene had come to be noted in Ex.P.30. We carefully applied our mind to this point and perused Ex.P.30. It is no doubt true that the parking of the lorry in the crime scene is noted in the last sentence of page one of the observation mahazar and before that sentence and the previous sentence, the word 'P.T.O' is found written. This does not, in our considered opinion, mean that the lorry was not found in the crime scene at all and it came to be introduced later on. Therefore we agree with the prosecution case that P.W.20 had a lorry with him for sale. P.W.8 is the wife of P.W.20 and she had also stated that her husband had a lorry with him for sale. The presence of the lorry by the side of P.W.20's house is spoken to by P.Ws.2, 3 and 4. P.W.4 had admitted, when he was cross examined, that till he gave evidence in court, he had not purchased any lorry. From this, it is argued that P.W.4 would not have had any idea at all in purchasing lorry at any point of time. When a witness states that he wants to buy a lorry, it is not possible for the court to go behind that statement and say that he had no intention to buy a lorry at all. Of course, we find that P.W.4 had admitted that P.W.8 handed over the lorry key and R.C. Book to them at that time. On this evidence it is argued that the evidence of P.W.20 that R.C. Book was with the financier is false and therefore, P.W.20's evidence must be disbelieved. When a vehicle is under a hire purchase transaction, either the financier would have the R.C Book with him with an endorsement to that effect and in that event, the vehicle owner would have a xerox copy of the said R.C.Book. There are instances where the financer, after making the hire purchase endorsement in the R.C.Book, would give the book to the lorry owner himself. Under these circumstances, from the evidence of P.W.4, namely, P.W.8 gave the R.C.Book to him, it is not possible to conclude that P.W.20's evidence is false and therefore he would have never had lorry. No worthy cross examination had been made at all to P.W.4 at least by even suggesting that he had no money to buy a lorry. Under these circumstances, we conclude that it is not possible to disbelieve the evidence of P.W.4 that he wanted to buy a lorry and only in that context, he went to the house of P.W.20 along with P.Ws.2 and 3.

31. As stated earlier, P.Ws. 2 to 4 are eye witnesses to the crime. Of course their statements stated to have been recorded on 29.3.2002 had reached the court only on 11.4.2002. We have no doubt at all that the evidence of the witnesses - may be even eye

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witnesses - may not be disbelieved solely on the ground that the statements of such witnesses recorded during investigation have reached the court belatedly. In other words, if the evidence of such witnesses are found to be reliable and trustworthy and there are no suspicious circumstances surrounding the examination of such witnesses during investigation, simply because the investigating agency had not taken care to send the statements of such witnesses to the court early, cannot be taken serious note of. The police officer namely, P.W.30 had taken care to send the statements of P.Ws.5,6 and 28 examined during inquest to the court without any waste of time and in fact the evidence on record shows that those statements have reached the court by about 4.45 p.m. on 29.3.2002. P.W.30 had also stated in his evidence that Ex.P.3, the Observation Mahazar; Ex.P.73, the inquest report and Ex.P.74, the rough sketch had also reached the court by 4.45 p.m. on 29.3.2002. Therefore it is clear that the investigating officer had sent the statements of witnesses recorded during inquest and the other documents referred to above to the court without any waste of time. In this context, we refer to the evidence of P.W.30 when he was cross examined on behalf of A.4 to A.6. P.W.30 had stated that, in the context of the murder of Sultan Meeran on 26.3.2002; murder of Murugesan on 28.3.2002 - murders in succession the entire city of Coimbatore, Kuniyamuthur and areas surrounding those places were in a highly disturbed state and a wide spread police bandobast was posted in and around the crime scene. Therefore in our opinion, the investigating officer, must have been in the centre of such high tensed situation and therefore we do not find fault with him in not sending the statements of P.Ws.2,3 and 4 to the court before 11.4.2002. We have already extracted in the earlier portion of this judgment their evidence in detail, which undoubtedly establishes that as they were inspecting the lorry, three persons passed them and within a short time thereafter, they heard a cry, which made them to run towards that place, where they found three persons stabbing one individual and it was around 7.00 or 7.30 a.m. Though these three witnesses have been cross examined by the defence at length, yet we find that their evidence in chief that three persons joining together stabbed one individual, remains unshaken. From their evidence, we could gather that the said three assailants are not known to them. Their evidence also shows that as they were criminally intimidated, they moved away from the crime scene and went to some close-by district in Kerala State in the look out for a lorry, since they had some information that a lorry is available in that place for sale. It is true that these three witnesses had not chosen to go to the police station to give a complaint. Had they done it, the defence would have no chance to condemn them. But from that mere failure on their part in not going to the police station, we are not in a position to reject their evidence in toto. Their evidence also shows that only on the night of 28.03.2002, all of them were examined by the police. P.W.2 had categorically stated that he could identify the three assailants and

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he identified A1 and A2 in the test identification parade held on 23.04.2002. When cross examined by A4 to A6, P.W.2 had stated that among the three assailants, one had beard and the third accused in court is the said person having beard. The test identification parade was held on 23.04.2002 and therefore it would have been definitely possible for P.W.2 to identify the assailants in the test identification parade, since the test identification parade had come to be conducted within a short time after the occurrence. It may be true that in the test identification parade P.W.2 had identified an unconnected person as the third assailant. But however, the fact remains that in the test identification parade, P.W.2 identified A1 and A2 and remembering the other assailant having beard, identified that person as A3 in court and this answer had been elicited while this witness was cross examined. This witness had denied that he was shown the videograph/photographs of the accused before he participated in the test identification parade. Since the occurrence had taken place in broad day light, the possibility of the witnesses retaining in their mind the impressions about the accused cannot be totally eliminated. P.W.2's evidence is that, one among the three assailants had received an injury in the course of the same transaction on his right hand wrist. We get corroboration for this in the evidence of P.W.13, the Doctor, before whom, A1 appeared at about 7.45 a.m. on 23.08.2002 for taking treatment for the injury sustained by him on his right hand wrist. Of course, to P.W.13, A1 had given a different picture as to how he came to sustain the injury. However, we are relying upon the evidence of P.W.13 only to the extent, namely, it lends corroboration to the oral evidence of P.W.2 that one of the assailants, he saw at the time of occurrence, received an injury on his right hand wrist. P.W.3's evidence on the occurrence proper and his subsequent conduct is more or less on the same lines as that of P.W.2. P.W.2 identified A1 to A3 in the test identification parade conducted by the Judicial Magistrate. He denied that he was shown the photographs and videographs of the accused before he was asked to participate in the test identification parade. P.W.3's evidence also shows that one among the three assailants received an injury on his right hand wrist in the same transaction. We have already referred to the oral evidence of P.W.13 in this regard. The evidence of P.W.4 on the occurrence proper and his subsequent conduct is on the same lines as that of P.Ws.2 and 3. His evidence also shows that one among the three assailants received an injury on his right hand. He also identified A1 and A2 in the test identification parade and in the court he identified A1 to A3. His evidence shows that among the three assailants, one had beard and A3 in court is the said person. Therefore, the evidence of P.W.4 is clear that he had retained in the mind the impression about one of the assailants as the person having beard and A3 in court is shown to be the said person. Under these circumstances, we accept the oral evidence of P.Ws.2 to 4 that they saw the occurrence, in which Murugesan was done to death and the assailants are A1 to A3. Of

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course, as noted earlier, they came to be examined only on the night of 28.03.2002. There is no evidence to show that these three witnesses were available very much at the crime scene or any where near the crime scene so as to enable the police officer to examine them. In this context, we refer to the judgment of the Supreme Court reported in 2005 S.C.C. Cri. 642 (STATE OF U.P v. SATISH) brought to our notice by the learned Additional Public Prosecutor. That judgment deals with the effect of delayed examination of witnesses. We are of the respectful opinion that it is better we extract hereunder what the Honourable Supreme Court of India said in that context.

> "Unless the investigating officer is categorically asked as to why there was delay in examination of the witnesses the defence cannot gain any advantage therefrom. It cannot be laid down as a rule of universal application that if there is any delay in examination of a particular witness the prosecution version becomes suspect. It would depend upon several factors. If the explanation offered for the delayed examination is plausible and acceptable and the court accepts the same as plausible, there is no reason to interfere with the conclusion. On the other hand, if the explanation is found to be implausible, certainly the court can consider it to be one of the factors to affect credibility of the witnesses who were examined belatedly. It may not have any effect on the credibility of the prosecution's evidence tendered by the other witnesses."

Having that position in law in our mind, we went through the evidence of P.W.30 and we do not find that the defence have put even a single question to him as to why he did not chose to examine P.Ws.2,3 and 4 during inquest or immediately thereafter. We have already noted from the evidence of P.Ws.2 to 4 that on seeing the crime they fled from the scene out of fear and proceeded on their way in looking out for a lorry to be purchased for P.W.4. Courts have always held that it is impossible to read the mind of a human being which sees the dastardly crime being committed. Therefore from the mere fact that P.Ws.2 to 4 - their evidence is out of fear - moving away from the crime scene without giving any complaint to the police or even informing anybody else about the incident which they saw till they came to be examined by the investigating officer late in the evening on 28.3.2002, would not by itself enable us to discredit their evidence. Their examination done during the night of 28.03.2002, in the face of their natural and impressive evidence, enables us to conclude that the evidence of P.Ws.2 to 4 cannot be rejected solely on the ground that they were neither examined during inquest nor immediately thereafter but only on the night of 28.03.2002. The evidence of P.Ws.2 to 4 that three persons are the assailants, gets support from the evidence

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of P.Ws.5 and 28. P.Ws.5 and 28 had gone to the temple to worship. At that time, they saw Murugesan passing the temple. While P.Ws.5 and 28 were returning after worship, they heard a hue and cry, which made them to run towards that place, where they saw three persons running away from the scene. P.W.5 had identified A2 only in the test identification parade. P.W.28's evidence is on the same lines as spoken to by P.W.5. P.W.28 had identified A1 and A2 in the test identification parade held on 23.04.2002. It may be true that P.Ws.5 and 28 had not given any complaint to the police. As we have noted earlier, the response of an individual seeing a dastardly crime being committed would vary from individual to individual. P.W.28 had denied that he was shown the photographs before he participated in the test identification parade. It must be noted here that P.W.15 in his evidence would state that, while he was on his way to the hospital along with Murugesan (since deceased), he informed the police about the occurrence over his mobile phone and the complaint itself had come to be registered at about 8.45 a.m. in the hospital by P.W.29. In the case on hand, we find that there is no evidence to show that Murugesan was wrongfully restrained before committing the crime. There is absolutely no legal evidence for the same. But however, the evidence of P.Ws.2 to 4 establish that A1 to A3 are the persons, who murdered Murugesan and the evidence of P.Ws.5 and 28 establish that they saw all the three assailants namely, A1 to A3, escaping from the scene of occurrence. On a careful examination of the evidence of the above referred to witnesses, it is not possible to take a different view than the one taken by the learned trial Judge on the charge under Section 302 I.P.C.

32. We went through the evidence of D.Ws.1 to 4. D.W.1's evidence also shows that A1 was taken to the hospital at Madukkarai. P.W.13 is the doctor in the said hospital.D.W.1 is the driver of the lorry and according to him, A1 was with him in the lorry during the occurrence time. The evidence of D.W.1 does not inspire our confidence at all. It is possible to secure the evidence of such witnesses later on to create 'alibi'. On the whole, his evidence does not inspire our confidence at all. D.W.2 is only having a clinical laboratory and he speaks about the blood group of A1. His evidence does not advance the case of the defence nor does it affects the prosecution case. D.W.3 is a photographer, who, at the instance of A3, is shown to have photographed the crime scene area. In our opinion, that evidence is of no use to decide the truth or otherwise of the prosecution case. D.W.4 had been examined to lend support to the oral evidence of D.W.1 that A1 sustained injury while attempting to repair the radiator of the lorry, which was under the control of D.W.1.Since we have rejected the evidence of D.W.1,we have no hesitation at all to reject the evidence of D.W.4 also. Accordingly,while acquitting A1 to A3 for the offence under Section 341 IPC with a further direction to refund the fine amount, if any, paid by them, we confirm the conviction and sentence of A1 to A3 for

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the offence under Section 302 I.P.C. Both the appeals stand disposed of as here under:

> "The conviction and sentence of A1 to A6 for the offence under Section 120-B I.P.C.; the conviction and sentence of A1 to A3 for offences under Sections 148 and 341 I.P.C.; the conviction and sentence of A4 and A6 for offences under Sections 147, 302 read with 149 I.P.C and the conviction and sentence of A5 for the offence under Section 302 read with section 109 I.P.C are set aside and each one of them are acquitted of the respective offences. The fine amount, if any, paid by them for the respective offences shall be refunded to them. The conviction and sentence of A1 to A3 for the offence under Section 302 I.P.C. is confirmed."

vsl/Tr

Sd/
Asst. Registrar

/true copy/

Sub Asst.Registrar

To

1.The First Additional Sessions Judge, Coimbatore
2.-Do- Through the Principal Sessions Judge, Coimbatore
3.The Judicial Magistrate No.7, Coimbatore
4.-Do- Through the Chief Judicial Magistrate, Coimbatore
5.The District Collector, Coimbatore
6.The Director General of Police, Chennai
7.The Public Prosecutor, High Court, Madras
8.The Superintendent, Central Prison, Coimbatore
9.The Inspector of Police, R-1 Podanur P.S.,
Coimbatore District

ONE CC TO MR.N. SULTAN ARIBEEN, ADVOCATE SR 63522

ONE CC TO MR.J. VIJAYARAGHAVAN, ADVOCATE SR 63523

ONE CC TO MR.N. MANOKARAN, ADVOCATE SR 63781

CRL.APP.NOS.338 & 336 OF 2004

18.12.2006

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